

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DAVID RIBEIRO

Plaintiff,

v.

DAVID S. USHER, MARTIN W. NAREY,
PAUL M. KELLY, JAMES D. BRIANT,
LT. HIGGINS, WILLIAM BENNETT AS
DISTRICT ATTORNEY, HOLYOKE POLICE
DEPARTMENT, COMMONWEALTH OF
MASSACHUSETTS, CITY OF HOLYOKE
Defendants.

CIVIL ACTION
NO. 04-30201-KPN

**DEFENDANT ASSISTANT DISTRICT ATTORNEY CATHERINE HIGGINS'S
MOTION TO DISMISS**

Pursuant to the provisions of Rule 12 (b)(6) of the Federal Rules of Civil Procedure, the Defendant Assistant District Attorney Catherine Higgins moves this Court to dismiss the above-entitled case for failure to state a claim upon which relief can be granted.

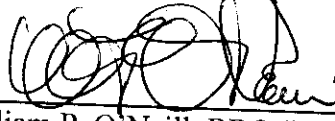
In support of such motion, Defendant Higgins states that she is sued as an Assistant District Attorney for negligence and the alleged violations of the Plaintiff's civil rights. As a criminal prosecutor on the staff of the District Attorney for Hampden County, Ms. Higgins is immune from liability for her actions as a prosecutor.

The Defendant incorporates her Memorandum of Law in Support of her Motion to Dismiss for further elaboration of these issues.

WHEREFORE, the Defendant Catherine Higgins as an Assistant District Attorney respectfully requests that the above-entitled action be dismissed.

Respectfully submitted,

THOMAS F. REILLY
ATTORNEY GENERAL



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DATED: May 4, 2005

CERTIFICATE OF SERVICE

I, William P. O'Neill, Assistant Attorney General, Western Massachusetts Division, 1350 Main Street, Springfield, MA 01103-1629 do hereby certify that on May 4, 2005, I caused the foregoing DEFENDANT CATHERINE HIGGINS AS ASSISTANT DISTRICT ATTORNEY MOTION TO DISMISS and MEMORANDUM OF LAW IN SUPPORT to be served upon the parties in this action by mailing a copy of the same, postage prepaid, first class mail to the Plaintiff pro se, David Ribeiro, 629 Randall Road, Ludlow, Massachusetts 01056 and Attorneys for the other Defendants, Charles P. Lavelle, Esq., Holyoke Law Department, 20 Korean Veterans Plaza - Room 204, Holyoke, Massachusetts 01040 and Austin M. Joyce, Esq., Edward P. Reardon, P.C., 397 Grove Street, Worcester, Massachusetts 01605.



William P. O'Neill
Assistant Attorney General